

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Kendall T. Cohen,)	
)	Case No.: 2:09-cr-160-PMD
Petitioner,)	
)	<u>ORDER</u>
v.)	
)	
United States of America,)	
)	
Respondent.)	
_____)	

Federal prisoner Kendall Cohen seeks relief from his sentence under 28 U.S.C. § 2255 (ECF No 104). The Government has filed a motion to dismiss Cohen’s § 2255 motion or, alternatively, to stay proceedings pending the Supreme Court’s decision in *Beckles v. United States*, 616 F. App’x 415 (11th Cir. 2015) (per curiam), *cert. granted*, 2016 WL 1029080 (U.S. June 27, 2016) (No. 15-8544) (ECF No. 114). Cohen agrees with the Government that this Court should wait for the Supreme Court to decide *Beckles*.

Cohen’s § 2255 motion can be distilled to three questions: (1) is the so-called residual clause of U.S.S.G. § 4B1.2(a)(2) unconstitutionally vague? (2) if so, may prison sentences enhanced using that clause be vacated under § 2255? (3) does the South Carolina crime of assaulting a police officer while resisting arrest, S.C. Code Ann. § 16-9-320(B), fit within another clause of § 4B1.2(a)’s definition of “crime of violence”? The answer to each question may be dispositive here. In *Beckles*, Supreme Court has agreed to answer the first two questions. A federal prisoner has asked the Fourth Circuit to answer the third. *See United States v. Brown*, *appeal docketed*, No. 16-7056 (4th Cir. Aug. 5, 2016).¹

1. *Brown* is an appeal from this Court. After denying Mr. Brown relief in that case, this Court declined to issue a certificate of appealability. *See United States v. Brown*, No. 2:02-cr-519-PMD, slip op. (D.S.C. June 17, 2016).

The Court finds it appropriate to wait for decisions to be issued in *Beckles* and *Brown*. Based solely on that agreement, the Court **GRANTS** the Government's stay request, with a slight modification. This matter is hereby **STAYED** until decisions are issued in *Beckles* and in *Brown*. Whenever the first of those two cases is issued, either party may move to lift the stay.

AND IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

November 8, 2016
Charleston, South Carolina

Brown has made a motion asking the Fourth Circuit to issue such a certificate. The Fourth Circuit has not yet ruled upon that motion.